IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.846 OF 1997

Shri Padmakar Anandrao Tamhane,
age 66 years occupation Advocate,
R/at 157-A, Saraswati Niwas,
Sir Bhalchandra Road,
Hindu Colony, Dadar,
Bombay-400 014. ....Appellant

V/s.

The Special Land Acquisition
Officer, Kal Prakalpa
(Konkan Railway Project),
At & Post Roha, Dist.Raigad ....Respondent

Mr.D.S. Sawant for the Appellant.

Mr.S.N. Gawade, A.G.P. for the Respondent.

WITH

FIRST APPEAL NO.942 OF 1997

The State of Maharashtra
at the instance of -
The Special Land Acquisition
Officer, Kal Prakalpa
(Konkan Railway Project),
At & Post Roha, Dist.Raigad ....Appellant

V/s.

Shri Padmakar Anandrao Tamhane,
age 66 years occupation Advocate,
R/at 157-A, Saraswati Niwas,
Sir Bhalchandra Road,
Hindu Colony, Dadar,

Bombay-400 014. ....Respondent

Mr.S.N. Gawade, A.G.P. for the Appellant.

Mr.D.S. Sawant for the Respondent.

CORAM : S. RADHAKRISHNAN &
S.J. VAZIFDAR, JJ.
DATED : 17TH SEPTEMBER, 2004.

ORAL JUDGMENT (PER S. RADHAKRISHNAN, J.) :

1. The original Claimant being aggrieved by the judgment and order dated 4th May, 1996 passed by the Reference Court being Civil Judge Senior Division, Panvel under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act" for brevity and convenience) has filed this First Appeal No.846 of 1997 as not satisfied with the enhancement granted. Similarly, the State of Maharashtra also has filed another First Appeal being First Appeal No.942 of 1997, challenging the enhancement granted by the Reference Court by the aforesaid judgment and order dated 4th May, 1996. In view thereof, we are disposing of both the above Appeals by this common judgment.

2. The brief facts are that the land of the original claimant admeasuring approximately 13 hectares

and 32 Are was acquired for the purposes of Morba Dam project. The notification under Section 4 of the said Act was published on 3rd August, 1989. Thereafter a further notification under Section 6 of the said Act was published on 2nd August, 1990. Notification under Section 9 of the said Act was issued on 24th September, 1990 and the award came to be passed on 5th December, 1992. As per the original award, the Petitioner was awarded a compensation of Rs.4,99,197/- towards the land acquired and towards the trees an additional amount of Rs.1969/- was granted, a sum of Rs.5969/- was granted towards Kharaba land. Ultimately the entire amount of compensation including solatium came to Rs.7,75,065/- as per the award mentioned herein above.

3. Being aggrieved by the aforesaid quantum of compensation, the original Claimant being the Appellant in the above Appeal, had filed a reference under Section 18 of the said Act. The original Claimant had strongly relied on an agreement for sale dated 3rd August, 1988 executed between the Claimant and one Navin Zaveri with regard to the land which has been acquired wherein the valuation is shown as Rs.20,00,000/-. The learned Judge while dealing with the same, has rightly observed that no credence can be given to the aforesaid agreement for sale dated 3rd

August 1988 since the original Claimant was already aware since 1985 that the authority had decided to acquire the lands and that the original Claimant has been in correspondence with the concerned authority since 1985. For the reasons stated in paragraph 7 of the aforesaid judgment, we are in full agreement that the said agreement for sale cannot be at all relied upon and even the contents of the said agreement for sale were not even proved before the Reference Court and rightly the learned Judge of the Reference Court had declined to take the same into consideration.

4. The learned Civil Judge Senior Division, Panvel after recording the evidence of the parties, came to the conclusion that the original Claimant had also relied on five sale instances which were referred to by the original Claimant and had only produced extract of the property index wherein certain valuations were shown. In the above, the learned Reference Court has rightly observed that the sale instances were not proved by producing the certified copies of the sale deeds and merely looking at the figures mentioned in the property index, one cannot come to a concrete conclusion since the characteristics of the land as well as the contents of the said agreement were not placed before the Court. In view thereof, the learned

Reference Court had rightly declined to take into account the aforesaid sale instances.

5. However, the learned Reference Court took into account the factual aspect that the land which was acquired was hardly 5 k.m. distance from Karjat Railway Station and 3 k.m. from Chowk and had a lot of potentiality for development as electricity and water supply was available on the acquired land. Taking into account the aforesaid facts, the learned Reference Court had increased the compensation awarded by the S.L.A.O. at Rs.37,925/- per hectare to Rs.80,000/- per hectare.

6. Mr.Sawant, the learned counsel appearing for the Appellant very strongly relied on the above mentioned sale instances to contend that for per hectare at least a compensation at Rs.1,00,000/- ought to have been granted. However, the learned counsel appearing for the Appellant also fairly conceded that neither the original sale deeds with regard to the same, nor certified copies of the aforesaid said sale instances were produced and what was produced was only the property card index. Even with regard to the agreement for sale executed between the said Navin Zaveri and the original Claimant dated 3rd August,

1988, the learned counsel appearing for the Appellant conceded that he did not examine the said Navin Zaveri as a witness. The learned counsel for the Appellant also could not dispute the fact that his client was aware since 1985, that the lands were to be acquired. Another vital aspect to be noted here is that both the original Claimant as well as said Navin Zaveri had filed suits against each other with regard to the aforesaid transaction.

7. Having considered all the facts and circumstances as well as the material on record and evidence produced before the Reference Court, we find that as far as the agreement for sale dated 3rd August, 1988 is concerned, the genuineness of the said transaction has been strongly doubted by the learned Reference Court with which we concur inasmuch as the original Claimant was very much aware that the land was proposed to be acquired at least three years prior to the said agreement for sale. In these circumstances, we are in full agreement with the finding of the learned Reference Court holding that the said Navin Zaveri was not a genuine purchaser and the said agreement for sale was not genuine agreement for sale.

8. As far as the second issue, the learned

Reference Court had declined to rely on the sale instances referred to by the original Claimant viz. five sale instances as indicated in the certified copy of the property card index. The learned Reference Court is right in holding that the said record does not indicate as to the nature of the land and the surrounding circumstances in which the sale deeds were executed and exact potentiality of each of the land concerned which could only deciphered from the original sale deeds of which no certified copies were admittedly produced before the said Reference Court. In these circumstances, even on this ground the Reference Court refusing to accept the said sale instances for the purpose of enhancing the compensation, no fault can be found.

9. Under the aforesaid facts and circumstances, we do not find any ground to interfere in the aforesaid First Appeal No.846 of 1997, as the learned counsel for the Appellant could not point out any material or evidence to justify any enhancement over and above what has already been granted by the Reference Court, hence the First Appeal stands dismissed, however with no order as to costs.

10. As far as the second First Appeal is concerned,

First Appeal No.942 of 1997 filed by the State Government challenging the enhancement granted by the Reference Court, we find that the learned Reference Court has strongly relied on certain admitted facts that is the land which was acquired was admittedly 5 k.m. from Karjat Railway Station and 3 k.m. from Chowk and just touching National Highway and also the learned Reference Court has taken into account the N.A. potentiality. The learned Reference Court has also taken into account the fact of availability of the electricity and water supply on the aforesaid acquired lands. Having referred to the aforesaid facts and circumstances, the learned Reference Court has fairly increased the compensation from Rs.37,925/- per hectare to Rs.80,000/- per hectare which we also find to be fair and just. Under these circumstances, we find no merits in the above First Appeal filed by the State Government challenging the aforesaid enhancement granted by the Reference Court. Hence the First Appeal No.942 of 1997 also stands dismissed, however with no order as to costs.

(S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOBBY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.846 OF 1997
WITH
FIRST APPEAL NO.942 OF 1997

DATE OF DECISION : 17TH SEPTEMBER, 2004.

For Approval and Signature :

HON'BLE MR.JUSTICE S. RADHAKRISHNAN

HON'BLE MR.JUSTICE S.J. VAZIFDAR

1. Whether Reporters of Local Papers may be allowed to see the judgement ?

2. To be referred to be Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgement ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur,

Aurangabad and Goa Offices ?)